

**CITY OF MILWAUKEE
INVITATION, INSTRUCTIONS, TERMS AND CONDITIONS
FOR FORMAL BID & CONTRACT**

Please note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information, or to request this service, contact the appropriate Purchasing Agent, Department of Administration, Business Operations Division, Procurement Services Section, 200 East Wells Street, Room 601, Milwaukee, WI 53202-3560, Phone: (414) 286-3501, Fax: (414) 286-5507.

*****IMPORTANT*****

Your bid must meet the plans and/or specifications set forth. Bids must be submitted on the forms provided. Your bid must be signed by a person (or persons) authorized to legally bind your firm to the contract your bid may become, or it will not be, considered. The contractor's section of the bid signature page (last page of bid) must be fully completed and witnessed in order for your bid to be considered. Bid bond, if required, must be submitted with your bid.

The City Purchasing Director shall have final award authority for all contracts valued over \$50,000. If the actual cost of a contract is \$50,000 or less after the bids have been opened, award shall be made by the City Purchasing Director and will not require a formal contract. A purchase order or vendor contract will be issued.

Any special conditions in the Invitation to Bid shall take precedence over any conflicting provisions stated elsewhere in these terms and conditions.

- **SPECIFICATION APPEALS:** Specifications that contain a term, condition, or provision that prevents one from bidding or are restrictive relative to the market and/or the service requirements of the City, can be appealed by filing a written appeal with the City of Milwaukee Purchasing Director at least five (5) business days prior to bid closing. EFFECTIVE AUGUST 8, 2001 THE FEE REQUIRED FOR A VENDOR TO APPEAL THE BID SPECIFICATIONS (PURSUANT TO s. 16-05 OF THE CHARTER AND s. 310-19 OF THE CODE), SHALL BE 1% OF THE ESTIMATED DOLLAR AMOUNT OF THE CONTRACT. IF YOUR APPEAL IS UPHELD, THE APPEAL FEE SHALL BE REFUNDED. THE APPEAL FEE IS A PREREQUISITE FOR PURSUING THE APPEAL AND MUST ACCOMPANY YOUR APPEAL. PLEASE CONTACT THE APPROPRIATE PURCHASING AGENT FOR INSTRUCTIONS.
- **BID FINDING APPEALS:** All bidders will be notified, in writing, of the City's findings with regard to determining the low bidder or bidders in response to this invitation. EFFECTIVE AUGUST 8, 2001, THE FEE REQUIRED TO APPEAL RECOMMENDATIONS OF AWARDS (PURSUANT TO s 16-05 OF THE CHARTER AND s 310-19 OF THE CODE), SHALL BE 1% OF THE DOLLAR VALUE OF THE RECOMMENDED AWARD. IF YOUR APPEAL IS UPHELD, YOUR APPEAL FEE WILL BE REFUNDED. THE APPEAL FEE IS A PREREQUISITE FOR PURSUING THE APPEAL AND MUST ACCOMPANY YOUR APPEAL. IF YOU WISH TO APPEAL THE CITY'S FINDINGS, FOLLOW THE INSTRUCTIONS PROVIDED WITH THE NOTICE OF FINDINGS LETTER.
- **BID BONDS, PERFORMANCE BONDS, INSURANCE:**
 - **BID BONDS:** If required, a bid bond in the amount specified (see Section F of Bid) must be approved by the Office of the City Attorney as to its form and execution prior to its submittal. All bid bonds will expire at the time that the successful bidder is awarded a contract with the City.
 - **PERFORMANCE BONDS:** If required, a performance bond in the amount specified in the Bid, is to be provided by the successful bidder to the DOA, Business Operations Division, Procurement Services Section, within ten (10) calendar days after receipt of the contract. Failure to do so can make the contract voidable at the City's discretion. Performance bonds must be approved by the Office of the City Attorney prior to the commencement of any work.
 - **INSURANCE:** If applicable, an insurance certificate, which meets the City's requirements, shall be provided to the DOA, Business Operations Division, Procurement Services Section with the bid or as stated in the bid/specifications. Failure to do so can make the contract voidable at the City's discretion. Said insurance certificate must be approved by the Office of the City Attorney prior to the commencement of any work.
 - The bid bond, the performance bond, and the insurance certificate must be issued by companies licensed to do business in the State of Wisconsin, or signed by an agent licensed by the State of Wisconsin. The City of Milwaukee will be named as an additional insured with respect to liability coverage.

- The bid bond, performance bond, and insurance certificate must be accompanied by an affidavit setting forth that: No City official or City employee has any interest, directly or indirectly, or is receiving any premium, commission, fee or other thing of value on account of the sale, furnishing of the bid bond, performance bond or insurance certificate. Said affidavit must be signed by the same agent who signs the bid bond, performance bond or insurance certificate.
- **BID DEPOSITS:** If required, your deposit in the amount specified in Section F of the Bid must be submitted in your bid envelope with your bid. Your deposit must be in the form of a cashier's or teller's check, certified check, or money order only. All bid deposits will be held by the City Treasurer until the time that the successful bidder is awarded a contract with the City. At that time, all bid deposits will be returned to all bidders.
- **SAFETY REQUIREMENTS:** All material, equipment, and supplies provided to the City must fully comply with all safety requirements as set forth by the Wisconsin Administration Code and all applicable OSHA Standards.
- **DELIVERY F.O.B. DESTINATION:** All bid prices must include delivery F.O.B. Destination to the address as indicated at time of order placement
- **TAXES TO BE EXCLUDED FROM PRICE:** All bids must be submitted without the inclusion of Federal excise and Wisconsin sales taxes as the City is exempt therefrom.
- **SIGNATURE REQUIREMENT AND FACSIMILE BIDS:**
 - **BIDS MUST BE SIGNED:** This bid must be manually signed by the bidder or contain his/her name in such a manner that the bid can be identified as being his/her bid. All attachments, additional pages, addenda, or explanations supplied by the bidder with this bid will be considered as part of the bid. However, they may be rejected as counteroffers when in conflict with the terms and conditions stated herein.
 - **FACSIMILE:** Fax bids must be received IN THEIR ENTIRETY before the 2:00 p.m. bid closing. An original copy of a bid sent by fax machine must be received by the DOA, Business Operations Division, Procurement Services Section, if requested, within four business days. **FAILURE TO RESPOND IN FOUR (4) BUSINESS DAYS MAY RESULT IN BID REJECTION.**
- **PACKAGING:** Materials shall be clearly labeled and packaged in accordance with Federal and Wisconsin requirements, and as specified in the terms and conditions of the invitation to bid.
- **SUBSTITUTIONS AND EQUIVALENTS:** Substitutions or equivalents of specified items may be permitted at the sole discretion of the City Purchasing Director. If bidding other than the specified product, make and model number, descriptive literature must be submitted with the bid. Failure to do so may be cause for rejection. Factors considered when evaluating the acceptance of a substitution or equivalent include, but are not limited to considerations such as size, color, compatibility, performance capability, and/or warranty.
- **RIGHT TO REJECT:** The City Purchasing Director reserves the right to reject any and/or all bids.
- **RIGHT TO ACCEPT ALL OR PART OF BID:** The City Purchasing Director reserves the right to accept all or part of any bid.
- **WITHDRAWAL OF BIDS:** Bids may be withdrawn only in total, and only by a written request addressed to the City Purchasing Director prior to the award of the contract. The City Purchasing Director has sole discretion to grant this request for a bid withdrawal and only in the case of an error that will result in a significant financial hardship. Partial bid withdrawal is not acceptable.
- **AMENDMENT OF BIDS:**
 - **By City:** Bids may be amended by the City Purchasing Director in response to need for further clarification, specification changes, new opening dates, etc. Copies of the amendment will be mailed to prospective bidders and should be signed by the bidder and returned as specified in the amendment.
 - **By Bidder:** Bids may only be amended once received by the DOA, Business Operations Division, Procurement Services Section by submitting a later dated bid that specifically states that it is amending an earlier bid. No bid may be amended after bid closing. Any amended bid that conflicts with the terms and conditions stated herein will be considered a counteroffer and may be rejected.
 - **Upon Request of Bidder:** If any of the terms and conditions prevent you from bidding, consideration will be given, if possible, to a bidder's request for a change. This request must be submitted to the DOA,

Business Operations Division, Procurement Services Section in writing five (5) business days prior to bid closing. If granted, it will require sending an addendum to all prospective bidders.

- **COUNTEROFFERS:** Counteroffers, changes to any terms, conditions, specifications or plans stated herein made without the approval from the DOA, Business Operations Division, Procurement Services Section may result in bid rejection.
- **TIE BIDS:** In the event of tie bids, the award will be made in accordance with the provisions set forth in the rules and procedures of the DOA, Business Operations Division, Procurement Services Section, which are incorporated and made part of this contract by this reference.
- **OFFER AND ACCEPTANCE:** The proper submission of this form by the bidder, will be considered as the bidder's offer to enter into a contract in accordance with the provisions herein set forth. All bids shall remain open for sixty (60) calendar days from the date of bid closing, unless otherwise specified under Section E (Special Conditions) of the bid. If your bid is accepted and a contract is issued, then this bid will constitute the entire contract between the City and your firm and it shall contain all the terms and conditions agreed on by the parties hereto, and no other agreement regarding the subject matter of this bid shall be deemed to exist or bind any of the parties hereto. Acceptance will take place only upon award by the City Purchasing Director, execution of this document by the proper City officials, and delivery of the fully executed contract to the successful bidder.
- **APPLICABLE LAW:** Except as provided herein, Wisconsin will be the forum for all disputes.
- **ASSIGNMENT OR SUBCONTRACT:** This contract may not be assigned by the successful bidder without the written consent of the City Purchasing Director. All subcontractors must also be approved by the City Purchasing Director.
- **CONTRACT CONTINGENT UPON FUNDING:** The failure of the Common Council of the City of Milwaukee to appropriate funds for the performance of the contract shall void the contract.
- **RIGHT TO ORDER WITHIN 10%:** The City Purchasing Director reserves the right to order within ten percent (10%) more or less of the quantities specified in the contract.
- **PURCHASE ORDER(S):** No shipments shall be made under the contract until a purchase order or vendor contract has been received unless otherwise agreed to by the City Purchasing Director. Note: A purchase order is not issued for a vendor contract (formerly known as a blanket contract).
- **NONDISCRIMINATION:** The successful bidder will not discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these categories as provided by Section 109-45 of the Milwaukee Code of Ordinances. This provision must be included in all subcontracts. Contractor agrees that they will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.
- **AMENDMENTS TO CONTRACT:** The contract can only be modified by a written amendment issued by the DOA, Business Operations Division, Procurement Services Section and signed by both parties. Amendments other than described above, will not be recognized by the City.
- **INDEMNIFICATION:** The successful bidder will indemnify and hold harmless the City against all damages, losses, liabilities, judgments, costs and expenses arising out of the successful bidder's performance or failure to perform under the contract.
- **DEFENSE OF SUITS:** Contractor will save and indemnify and keep harmless, the City of Milwaukee against all liabilities, judgment costs and expenses which may be claimed against the City in consequence of the granting of this contract.
- **WAIVER:** One or more waivers by any party of any term of the contract will not be construed as a waiver of a subsequent breach of the same or any other term. The consent or approval given by any party with respect to any

act by the other party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent, similar act by such party.

- **SANCTIONS:** If any document submitted by a contractor requesting certification as an Minority, Women or Small Business Enterprise (M/W/SBE) for the purpose of participating in any City contract contains false, misleading or misrepresenting information, the City may direct the imposition of any of the following sanctions on the contractor:
 - Withholding of payment
 - Termination, suspension or cancellation of the contract in whole or in part.
 - Denial to participate in any further contracts awarded by the City for a period of one year after the first violation is found and for a period of three years after any subsequent violations are found.

The contractor must provide accurate information related to its taxpayer identification number. If incorrect information is provided and the contractor fails to adequately and timely respond to the City's efforts to obtain corrected information, the City may impose a fee equal to the City's added costs for meeting backup withholding requirements. This sum may be deducted from payments owed the contractor pursuant to this or other contracts, or may be billed separately. Failure to cooperate with the City in this regard, or failure to pay a fee imposed under this provision, could result in the contractor being barred from participating in future City contracts.

- **GOVERNMENT PRICING:** Vendors may bid lower than U.S. Government contract prices. The City is exempt from the Robinson Patman Act. Quotation must conform to government regulations on prices and wages.
- **DELAYS IN DELIVERY:** Delays in delivery caused by any bona fide strikes, government priority or requisition, riots, fires, sabotage, acts of God, or any other delays deemed, by the City Purchasing Director, to be clearly and unequivocally beyond the contractor's control, will be recognized by the City. The contractor may be relieved of the responsibility of meeting the delivery time as stipulated in the contract upon contractor's filing with the City Purchasing Director, just and true statements requesting an extension of delivery, signed by the contractor and giving in detail all the essential circumstances which, upon verification by the City, justify such action under the provisions of this section by the City Purchasing Director. The request must be filed with the City Purchasing Director no later than SEVEN (7) CALENDAR DAYS PRIOR TO THE ACTUAL DELIVERY DATE. Failure to file this request for delivery extension shall render the contractor liable for the difference between the "open market" and the contract price, and other costs, as applicable, under the Uniform Commercial Code.
- **MATERIAL SAFETY DATA SHEETS:** When applicable, vendors shall supply the City with a MATERIAL SAFETY DATA SHEET for any hazardous material purchased. In addition, the vendor shall supply any material related to the safe use of this material and hazards associated with its use, including but not limited to the installation procedures and personnel protective equipment requirements. All hazardous components shall be identified. All data sheets must have the corresponding city purchase order number or contract number clearly printed on the first page. Sheets must be sent to the City Purchasing Director prior to the shipment of the material. No payments will be made until the material safety data sheets are received.
- **EXTENSIONS:** Agreements shall run for the period indicated. Option of extension, if mutually agreeable to both the City and the contractor, shall be in writing and exercised within sixty (60) days of the contract expiration date.
- **CANCELLATION:** The City of Milwaukee reserves the right to cancel any order or contract for failure of the successful bidder to comply with terms, conditions, & specifications of the Invitation to Bid.
- **PAYMENT FOR CONTRACT PERFORMANCE:** Upon the complete performance of this contract by the contractor and after the acceptance of said performance by the City Purchasing Director, the City shall pay to the contractor any balance then remaining due and payable under the terms of this contract for said work, material, services, items, supplies or equipment
- **PAYMENT MONITORING REQUIREMENTS:** All Contractors awarded a contract valued at \$25,000.00 or more are required to participate in training on the City of Milwaukee's contract compliance software. Contractors must complete the training no later than 30 days after the date of contract award. Throughout the contract term, Contractors are required to regularly provide timely payment information in the City's contract compliance software. Please contact the Office of Small Business Development (OSBD) at 414-286-5553 should you have any questions or concerns regarding the training process.
- **CONTRACT DEFAULT:** If the Contractor shall fail to fully and completely perform the contract within the time designated for the performance thereof, the contractor shall pay the City, liquidated damages for such default, any

amount of any deposit or bond required by the bid. Failure to require such amounts, deposits, or bonds shall not limit the remedies otherwise available to the City of Milwaukee.

- **INTEREST IN CONTRACT:** No officer, employee or agent of the City of Milwaukee who exercises any functions or responsibilities in connection with the review, approval or administration of this contract shall have any personal interest, direct or indirect, in this contract.
- **EMPLOYMENT DISCRIMINATION PROHIBITED:** Contractor shall not discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation or familial status. Contractor must include a similar policy for all of its subcontractors.
- **BID:** The bidder, by the properly executed signatures as required on the last page of the bid, hereby proposes to furnish the supplies, equipment, work, material, labor, or services described on the bid, in accordance with the Invitation, Instructions, Terms and Conditions for Formal Bid and Contract form and specifications, plans, special conditions, terms and conditions stated herein, and if the bid is accepted, the bidder agrees that all provisions set forth herein will become binding as a contract upon the fulfillment of all conditions precedent set forth herein.
- **GUARANTEED DELIVERY:** Failure by the contractor to adhere to the delivery schedule as specified, or to promptly replace rejected or defective materials, shall render the contractor liable for the difference between the "open market" and the contract price, and/or other costs as applicable under the Uniform Commercial Code.
- **WHEN APPLICABLE, THE CITY RESERVES THE RIGHT TO AWARD WITH OR WITHOUT THE TRADE-IN, WHICHEVER IS IN THE BEST INTEREST TO THE CITY**
- **FEDERAL EXECUTIVE ORDERS 12549 AND 12689 DEBARMENT AND SUSPENSION:** The City of Milwaukee reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- **OTHER PROVISIONS:** Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, et seq. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.
- **FAIR TRADE PROVISION:** If this bid relates to the purchase of food or beverages, the contractor is urged to make Fair Trade products available in accordance with Common Council Resolution Number 070280 declaring the City of Milwaukee a Fair Trade City, effective July 18, 2007.
- **SUBCONTRACTOR PAYMENT:** If this bid has subcontractor requirements, prime contractor must pay subcontractor(s) within ten working days of the contractor's receipt of payment from the City of Milwaukee, or ten days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor/vendor fails to make timely payment to a subcontractor, the contractor/vendor shall pay simple interest at the rate of one percent (1%) per month, beginning with the 11th calendar day.